deeds, and require writing only to satisfy the Statute of Frauds. The legal estate and the so-called equitable estate cannot be held by the same person,— no man can hold property in trust for himself. When the *cestui que trust* gives up his interest to the trustee, there is no merger of estates. The trustee acquires nothing that he did not have before, but the *cestui's* right of action is extinguished, for no man can have a right of action against himself. The trustee's estate is not enlarged; it is only his liability that has changed. He holds the legal estate as he held it before; but the "equitable estate" is extinct.

This becomes important in cases like *In re Van Hagan*.[1] Here the testator gave to his mother a general power of appointment over certain real estate, and provided that if this power should not be exercised the estate should go to C. The mother, by her will, gave the property in question to certain trustees in trust for one G, who died during the testator's lifetime. The court held that the trustees should hold in trust for the heir-at-law of the mother. The testator had parted with his whole interest, leaving nothing which his heir could take; the power of appointment had been exercised, shutting out C; there was never any intent that the trustees should take for their own benefit; and the mother, having exercised her power, was in the position of an owner who had conveyed upon a trust which could not be fulfilled, and there was therefore a resulting trust in her favor.

Now, if the interest granted by the mother to G had been an *estate*, properly so called, the appointment as to that estate would have failed, and the estate would have passed to C. If she had appointed to G directly, G dying before the testator and no other appointment having been made, C would have taken the estate. So, if she had given the estate to another for years with remainder to G, G dying before the testator, it would seem that no appointment as to the remainder had been made, and this remainder would, by the testator's will, have gone to C. But as the interest given to G was not an estate, but an interest only, the whole estate being vested in the trustees, there was no failure of appointment, and C was barred.

The distinction between an estate, properly so called, and an equitable interest is overlooked in Massachusetts when property is devised by a will that discloses a trust, but keeps the object of the trust a secret between the testator and the trustee. Such property goes, in Massachusetts, by way of resulting trust, to the heirs or next of kin of the testator, as property not disposed of by the will, the secret trust being set aside as too indefinite.[2] This theory seems unsound. The testator cannot, as has already been said, hold both the legal estate and the equitable estate, so called — his entire interest was the right *in rem* which he devised to the trustee, and, consequently, nothing remains that the heirs or next of kin can take as property not disposed of by the will. The testator, it is true, created a right *in personam* against the trustee of which the heirs or next of kin may, in certain contingencies, obtain the benefit; but this right was not property of the testator.

LIABILITY OF AN INFANT FOR DECEIT IN INDUCING A SALE. — (*From Prof. Gray's Lectures.*) — Cases of some difficulty in regard

[1] Weekly Notes (1880) 164 (Ames' Cas. on Trusts, 239).

[2] Gray, J., in *Olliffe* v. *Wells*, 130 Mass. 221. But see *Riordan* v. *Bannon*, Irish Rep. 10 Eq. 469 (Ames' Cas. on Trusts, 308); *Crook* v. *Brooking*, 2 Vern. 50, 106; *Smith* v. *Attersoll*, 1 Russ. 266; *In re Fleetwood*, 15 Ch. D. 594; *Scott* v. *Brownrigg*, L. R. 9 Irish, 246 (*Semble*); *Saylor* v. *Plaine*, 31 Md. 158, 167 (*Semble*), *contra*.

to the liability of infants for tort are those arising out of sales. Two cases may be put to illustrate the point.

1. An infant agrees to deliver ten casks of wine, and receives the price for them in advance. He delivers ten casks containing a mixture of water and wine.

2. An infant having ten casks filled with a mixture of water and wine and knowing their contents, sells them as containing pure wine.

In the first case the infant is clearly not liable. He has simply broken a contract to deliver the wine. He might have availed himself of his infant's privilege by refusing to deliver anything, and incurred no liability for the breach of contract, though if he retained *in specie* the price paid, it might, of course, be recovered. *A fortiori* there is no liability if, instead of wholly repudiating the contract, the infant delivered goods of inferior quality. There is no tort, but simply a breach of contract.

But in the second case, instead of breaking a contract, the infant has induced by fraud the formation of one, and it might well be held that he should be liable. There is a reason why the infant should be protected from his promises, but there is no reason why he should be protected from his lies.

This distinction, however, is not taken. On both sides of the water it is held that an infant is not liable for a warranty known to be false. *Green* v. *Greenbank*, 2 Marsh. 485; *Gilson* v. *Spear*, 38 Vt. 311.

Although this is well settled, it is hard to reconcile with cases which have held an infant liable for purchasing goods on credit, intending at the time of the sale not to pay for them. *Wallace* v. *Morss*, 5 Hill, 391; *Mathews* v. *Cowan*, 59 Ill. 341. The gist of the liability seems to be that the infant fraudulently induced the plaintiff to make a sale or a contract, but this is equally true in the case of a warranty known to be false.

Consider also, in this connection, the liability of an infant for representing himself to be of age and thereby inducing a sale. In *Johnson* v. *Pie*, 1 Lev. 169, it was held that the infant was not liable, but in *Fitts* v. *Hall*, 9 N.H. 441, it was held that he was liable for misrepresenting his age. Now, assuming that an infant is not liable for a false warranty or false representations as to goods, it is difficult to see why he should be liable for a false statement in regard to himself. Consistency would require that infancy be held a good defence. In equity the question is treated in a curious way. It is said that the infant is estopped to say that he was not of age. In *Ex parte Unity Joint-Stock Banking Association*, 3 DeG. & J. 63, it was held that contracts made by means of false representations of his age could be proved against an infant's estate. It is certainly undesirable and unjustifiable upon principle that the rule should be different in equity and at law.